HONORABLE MARSHALL FERGUSON
Noted for Hearing: November 26, 2019, at 9:00 a.m.
With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

GARFIELD COUNTY TRANSPORTATION AUTHORITY; KING COUNTY; CITY OF SEATTLE; WASHINGTON STATE TRANSIT ASSOCIATION; ASSOCIATION OF WASHINGTON CITIES; PORT OF SEATTLE; INTERCITY TRANSIT; AMALGAMATED TRANSIT UNION LEGISLATIVE COUNCIL OF WASHINGTON; and MICHAEL ROGERS, Plaintiffs, v. STATE OF WASHINGTON, Defendant.	No. 19-2-30171-6 SEA PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

I. INTRODUCTION

The State inexplicably asserts that the unconstitutional loss of local revenue from I-976 is "simply money." But these are funds that can never be recovered with real service impacts on people like Mr. Rogers and others who rely on transportation. There is no adequate remedy to make Plaintiffs and their constituents whole from implementation of this unconstitutional measure. Conversely, no voter is harmed if the initiative is stayed because any over collection of fees and

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taxes can be refunded. With an affirmatively misleading ballot title, multiple subjects, hidden amendments, an overreach of initiative powers, and the reversal of local election results, I-976 patently violates Washington's constitution. A preliminary injunction is necessary to preserve the status quo while this Court considers these important constitutional questions.

II. ARGUMENT

A. The I-976 Ballot Title Deceives Voters.

The State admits that to satisfy article II, section 19's subject in title requirements "material representations in the title must not be misleading or false." State's Resp. at 18. Because I-976's ballot title affirmatively misled voters, it presents an *a priori* constitutional violation that invalidates the initiative. *See Wash. Ass'n for Substance Abuse & Violence Prevention v. State*, 174 Wn.2d 642, 660, 278 P.3d 632 (2012) ("[T]he material representations in the title must not be misleading or false, which would thwart the underlying purpose of ensuring that no person may be deceived as to what matters are being legislated upon." (internal quotations omitted)); *Howlett v. Cheetham*, 17 Wash. 626, 635, 50 P. 522 (1897) ("[A] title which is misleading and false is not constitutionally framed, and will vitiate the act.").

The ballot title falsely claims that I-976 will "limit annual motor-vehicle-license fees to $30, **except voter-approved charges**." Segal Decl., Ex. B (emphasis added). The State admits that all voter-approved vehicle fees are repealed by I-976. State's Resp. at 7-8. Yet, the State fails to identity any law authorizing a vote to exceed the $30 cap that remains **after** I-976's December 5 effective date. There is no relevance to the State's hope for some future law to fulfill the ballot title's false promises. Indeed, the ballot title tells voters what I-976 "would" do upon its effective date, including allowing voter approval to exceed the $30 cap – but these claims are completely false.

The State fails to explain any non-deceitful meaning for the ballot title's claim that voters can exceed the $30 cap. It argues that the ballot title provision applies to state license fees only, not Transportation Benefit District ("TBD") vehicle license fees ("VLF"). But even a cursory review of I-976 demonstrates that its broad, liberally construed language applies to both "[s]tate **and local** motor vehicle license fees." Segal Decl., Ex. A, § 2(1) (emphasis added). Whether license fees go to the TBD or the State does not matter because "motor vehicle license fees" are broadly defined as "the general license tab fees paid annually for licensing motor vehicles." *Id.*, § 2(2). Both are assessed at the same time annually and collected by the Department of Licensing for the privilege of operating a vehicle.

The deceitfulness of the ballot title does not end here. The title plainly represents a $30 cap on vehicle license fees. But to avoid invalidation under article II, section 37, the State argues that the annual license fees in chapter 46.17 RCW will continue to apply in excess of the $30 cap. Either way, I-976 violates the Constitution. If I-976 is narrowly construed (contrary to its terms) to allow annual license fees well in excess of $30, then it violates subject-in-title requirements through yet another misrepresentation. If I-976 repeals these other fees by implication, then the initiative is unconstitutional under article II, section 37. Because the State's inconsistent positions cannot be reconciled, I-976 should be invalidated.[1]

B. I-976 Violates the Single-Subject Rule Through Impermissible Logrolling.

As the State acknowledges, the single-subject rule prevents "logrolling." Whether I-976's title is general or restrictive, I-976 combines multiple subjects, not germane to each other, in an effort to cobble together voter support.

[1] The title also fails to mention other substantial subjects of I-976, most notably the sections directed toward Sound Transit and its bonds.

Initially, the State's characterization of I-976's subject as "motor vehicle taxes and fees" is too broad. The Washington Supreme Court's I-776 decision held that its subject was "**limiting** . . . charges that motor vehicle owners must pay upon . . . **registration**" despite it having a statement of subject "concerns state and local government charges on motor vehicles." *Pierce Cty. v. State*, 150 Wn.2d 422, 427, 432, 78 P.3d 640 (2003) ("*Pierce Cty.* I") (internal quotations omitted, emphasis added).[2] Like I-776, I-976's general subject should be qualified as "limiting" vehicle taxes and fees at "registration."

The subjects of I-976 are not all germane to that general subject, nor to each other. I-976 **combines** a reduction in state vehicle registration taxes **with** elimination of locally voted registration taxes **with** elimination of the one-time vehicle sales tax **with** the repeal of local voter authority to issue vehicle fees **with** a purported requirement that Sound Transit repay outstanding bonds **with** a change in the valuation schedule only used by Sound Transit **with** a reduction in Sound Transit's authority to issue future MVETs should it not repay its bonds. A voter may have supported I-976 because they did not like the state MVET, or a locally voted MVET, or the MVET valuation schedule, or Sound Transit. Combining these subjects constitutes logrolling.

The Sound Transit sections particularly stand out. The State concedes these sections target Sound Transit and its bonds. State's Resp. at 16. Yet nothing in the ballot title mentions Sound Transit or the purported requirement for Sound Transit to raise and spend billions of dollars repaying bonds and delaying projects (Decl. of Tracy Butler ("Butler Decl."), ¶¶ 3-8) or the contingent alteration of the MVET rate that future Sound Transit projects require (a provision the State ignores). The State seeks to overcome this obvious deficiency by asserting these provisions are "necessary" to implement other subjects of I-976 (citing *Citizens for Responsible*

[2] *See also* Suppl. Segal Decl., Ex. A.

Wildlife Mgmt. v. State, 149 Wn.2d 622, 71 P.3d 644 (2003)). But the Sound Transit provisions are not "incidental" subjects like the use of certain traps or poisons in an initiative regulating animal trapping. *Id*. at 639. It is impossible to argue that requiring Sound Transit to **raise** additional tax revenue over a greater number of years is related to subjects aimed at reducing vehicle taxes.[3]

The State's discussion of *Pierce County* I also misses the mark. No justice opined there was rational unity between the other provisions of I-776 and the one related to the early retirement of Sound Transit's bonds. The Court instead determined the Sound Transit bond provisions were merely "precatory" language. *See* 150 Wn.2d at 435-36; *see also* PI Mot. at 20-21. The three dissenting justices would have invalidated I-776 despite the precatory language. 150 Wn.2d at 442-44 (Chambers, J., dissenting).

Moreover, the State's effort to distinguish *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 11 P.3d 762 (2000), *City of Burien v. Kiga*, 144 Wn.2d 819, 31 P.3d 659 (2001), and *Wash. Toll Bridge Auth. v. State*, 49 Wn.2d 520, 304 P.2d 676 (1956), fails. As *Citizens for Responsible Wildlife Management* noted in discussing these cases, an initiative with "dual subjects" including "one [that] was more broad, long term and continuing than the other" is "a characteristic that suggests logrolling may be at issue." 149 Wn.2d at 637. As in *ATU*, *Kiga*, and *Toll Bridge*, I-976 combines one-time subjects like the rollback of vehicle taxes with longer term changes such as the repeal of authority for locally voted vehicle taxes, the MVET valuation schedule, and the purported requirement that Sound Transit pay off its bonds or face a future

[3] The State cites no case holding that an initiative may combine specific and general subjects where necessary to implement each other. The only case the State cites did "not combine a specific impact of a law with a general measure for the future" or discuss whether the provisions at issue were necessary to implement one another. *Wash. Ass'n for Substance Abuse*, 174 Wn.2d at 659.

limit on its MVET authority. Indeed, the invalidation in *Kiga* for combining a tax rollback with a method for future tax assessment is particularly on point. *See* 144 Wn.2d at 827-28.

C. The State Concedes I-976 Unconstitutionally Amends Statutes under Article II, Section 37.

The State acknowledges article II, section 37 ensures that the effect of a new law on existing law is "clear" and that voters are not "required" to search "amended" statutes to know the law. State's Resp. at 24. But the impacts of I-976 are unclear and require review of multiple statutes to try to understand I-976.

The State concedes that language in RCW 36.73.040 and .065 "would no longer apply" because of I-976's repeal of RCW 82.80.140. State's Resp. at 22.[4] RCW 36.73.040 and .065 are not "exceptions," as the State claims, but rather authorizing statutes vesting TBDs with various powers, including the power to impose VLFs. The State's acknowledgement that portions of these statutes "no longer apply" is an implicit concession that I-976 amends these statutes. The State's citation to *ATU* does not help. The *ATU* reference relates to lost funding impacts from the repeal of certain taxes, not actual amendatory impacts to other statutory provisions. 142 Wn.2d at 254-55. *ATU* confirms elsewhere that a law cannot amend existing statutes unless it complies with article II, section 37. *Id*. at 253-54.

Similarly, section 2 of I-976 directs state and local vehicle license fees "may not exceed" $30, but the State contends that I-976 preserves fees under chapter 46.17 RCW in excess of $30. State's Resp. at 24-25. I-976 specifies the limited exceptions to the $30 cap. Segal Decl., Ex. A, § 2 (purported exception for "voter-approved charges"), § 3(2) (retaining filing fee and "any other

[4] The State does not contest that I-976 is an incomplete act. *See* PI Mot. at 28.

fee or tax required by law").[5] The State's claim that the other chapter 46.17 RCW fees are not subject to this cap is irreconcilable with the statutory scheme, which categorizes many fees as "vehicle license fees," *see* RCW 46.17.305-.380, or fees paid annually for licensing vehicles, *see generally* ch. 46.17 RCW – both of which are encompassed by the I-976 license fee definition.

Given these amendments, I-976 renders erroneous any attempt at a "straightforward determination of the scope of rights or duties" under RCW 36.73.040, .065, and chapter 46.17 RCW. *El Centro De La Raza v. State*, 192 Wn.2d 103, 129, 428 P.3d 1143 (2018) (internal quotations omitted). This is particularly true for RCW 36.73.065(6), which concerns voter-approved VLFs, given the inconsistency between section 2, which suggests voter-approved fees remain in effect, and section 6(4), which repeals RCW 82.80.140, including the voter-approved VLF. I-976 violates article II, section 37.

D. I-976 Unconstitutionally Reverses Local Election Results.

The State does not contest that elimination of local TBD VLF funding invalidates a 2014 Seattle election. The State cites *Pierce County* I, but nothing in that decision addresses the fundamental right to vote under article I, section 19. Furthermore, no case holds the State (or voters via initiative) may nullify the effect of a specific time-limited local electoral determination. Constitutional provisions grant the power to overturn elections, but none apply here. "[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Gold Bar Citizens for Good Gov't v. Whalen*, 99 Wn.2d 724, 730, 665 P.2d 393 (1983). Here,

[5] The State cites to *ATU*'s discussion of I-695, which contained wholly different language. *See* Suppl. Segal Decl., Ex. B at § 1 (stating only that "[l]icense tab fees shall be $30"). The State also argues that the other fees would be "required by law," but that is not true if I-976 eliminates them.

the rights of 140,000 Seattle voters who lawfully enacted local taxes are debased by the I-976 vote, largely by voters outside Seattle.

E. I-976 Unconstitutionally Interferes with Executive Administrative Functions.

The State fails to dispute Plaintiffs' argument that I-976 violates separation of powers by attempting to legislate on administrative matters within the realm of the executive branch. Instead, the State argues only that state initiative powers are broader than local powers, but this misses the constitutional restriction on legislative interference with administrative matters. Whether state or local, any initiative "is limited in scope to subject matter which is legislative in nature" and cannot encompass administrative acts. *Ford v. Logan*, 79 Wn.2d 147, 154, 483 P.2d 1247 (1971); *accord City of Port Angeles v. Our Water-Our Choice!*, 170 Wn.2d 1, 7-8, 239 P.3d 589 (2010) ("**[N]either article II, section 1 nor RCW 35A.11.080** encompasses the power to administer the law, and administrative matters . . . are not subject to initiative or referendum." (emphasis added)).

I-976 interferes with administrative function through section 12, which deals with the administration of existing bonds. An initiative provision requiring the repayment of outstanding bonds is an administrative, not legislative function. *Ruano v. Spellman*, 81 Wn.2d 820, 824-25, 505 P.2d 447 (1973); *Bidwell v. City of Bellevue*, 65 Wn. App. 43, 45-46, 827 P.2d 339 (1992). Because an initiative – whether state or local – cannot intrude on administrative functions, I-976 is unconstitutional.

F. Legislative Judgment on Effective Dates Cannot Be Delegated.

The State incorrectly argues that the effective date of the initiative can be delegated to "the exercise of judgment by . . . third parties." State's Resp. at 29. The Supreme Court, however, has distinguished between "[c]onditioning the operative effect of a statute upon the

happening of a future specified event" versus "transfer[ring] the power to render judgement on an issue to a federal legislative or administrative body." *Diversified Inv. P'ship v. Dep't of Soc. & Health Servs.*, 113 Wn.2d 19, 28, 775 P.2d 947 (1989). Section 16 of I-976 violates separation of powers by leaving the effective dates of initiative sections, as well as the repeal or amendment of other statutes, within Sound Transit's judgment of **whether** and **when** to comply with section 12. The permutations of effective dates in section 16 are compounded further by Sound Transit's judgment on the **order** of statutory compliance. This unprecedented delegation is plainly unconstitutional.

G. Implementation of I-976 Will Cause Imminent, Irreparable Harm.

The State argues that Plaintiffs' harms are too distant and uncertain to warrant an injunction, but the opposite is true. The permanent inability to recoup lost revenue is textbook immediate, irreparable harm, especially for local TBDs that lose $58 million annually, including $2.68 million for Seattle **alone in December 2019**.

The State speculates that immediate impacts to projects and services may not be felt while the case is briefed on the merits, but the record shows otherwise. *See, e.g.*, Gannon Decl., ¶ 9 (explaining King County Metro's December 9 contractual deadline regarding service cuts); Suppl. Gannon Decl., ¶¶ 3, 5 ("**Service cuts will be irreversible as of December 9, 2019.**"; "The planned reduction of 110,000 service hours represents the work of 82 full-time employees."); Poor Decl., ¶¶ 11-12 (immediate suspension of highway projects). The harms will quickly spread and multiply, warranting an injunction, not the reverse. *See* Butler Decl., ¶¶ 5-8 (costs and impacts of Sound Transit bond defeasement). Corresponding federal funding will be jeopardized. Gannon Decl., ¶ 10. More jobs will be lost. Swartz Decl., ¶ 7. Public-transportation-dependent individuals (particularly the most vulnerable members of our

communities) will face life-changing daily limits on mobility. *See* Freeman-Manzanares Decl., ¶¶ 4, 8; Rogers Decl., ¶ 10; Dixon Decl., ¶¶ 7-8 (projecting "catastrophic effect" on Eastern Washington transit users especially "seniors, the disabled, and disadvantaged persons"). These are real harms to real people.

The State admits there is a viable refund process (*see* Price Declaration) and ignores the impossibility of after-the-fact revenue collection. Other potential administrative costs reflect, at most, monetary harm dwarfed by the statewide impacts if the initiative takes effect. Conjecture as to other potential revenue sources is irrelevant and ignores existing commitments or restrictions on government funds. *Coppernoll v. Reed*, 155 Wn.2d 290, 119 P.3d 318 (2005), counsels against a **preelection** injunction, yet even in the preelection context, injunctions are warranted in the face of constitutional deficiencies. *See, e.g.*, *Burien Cmtys. for Inclusion v. Respect Washington*, No. 77500-6-I, 2019 WL 4262081, at *1 (Wash. Ct. App. Sept. 9, 2019). "[D]eprivation of constitutional rights unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal quotations omitted). By itself, such violations are a well-recognized basis for an injunction, but here there is much, much more.

III. CONCLUSION

Plaintiffs respectfully request that the Court grant a preliminary injunction to prevent the irreparable harm that will be caused by the implementation of unconstitutional I-976.

I certify that this memorandum contains 2,811 words, in compliance with the Court's Order Granting Plaintiffs' Unopposed Motion to File Overlength Motion for Preliminary Injunction.

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CERTIFICATE OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, over the age of 21 years and not a party to this action. On the 25th day of November, 2019, I caused to be served, via the King County E-Service filing system, and via electronic mail per agreement of the parties, a true copy of the foregoing document upon the parties listed below:

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